

School Council Agreement for the Provision of Services

[Instructions for use of this document: wherever brackets [] or highlighted text appear within this document, complete instruction or delete if not applicable – including these instructions]

Between

The School Council listed in Item 1(a) of Schedule 1 (**School Council**)

and

The Supplier listed in Item 1(b) of Schedule 1 (**Supplier**)

Background

- A. The School Council wishes to engage the Supplier to provide the Services on and subject to the terms of this Agreement.
- B. The School Council hereby engages the Supplier and the parties mutually acknowledge that it is their common intention to work together throughout the Term to continuously seek improvements in value, efficiency and productivity in connection with the supply of Services under this Agreement to the mutual benefit of both parties.

Agreed Terms

1. Definitions and Interpretation

1.1 Definitions

In this agreement, unless the context otherwise requires:

Agency means a provider of services under a contract entered into with the School Council relevant to family violence risk assessment or family violence risk management.

Agreed Terms means clauses 1 to 27 of this Agreement.

Agreement means this School Council Agreement for the Provision of Services comprising the documents specified in clause 1.5.

Alignment (and correspondingly **Align**) means actions taken by Framework Organisations to effectively incorporate the four pillars of the Framework into existing policies, procedures, practice guidance and tools, as appropriate to the roles and functions of the prescribed entity and its place in the service system.

Applicable Entity has the meaning given to it under section 3 of the *Child Wellbeing and Safety Act 2005* (Vic).

Approved Framework means the Family Violence Risk Assessment and Risk Management Framework as amended from time

to time approved under section 189 of the FVP Act.

Business Day means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)) in Melbourne.

Child-connected work has the meaning given to it in the Ministerial Order.

Child Safety Laws means any Laws that in any way relate to child safety.

Code of Conduct means the Code of Conduct for Victorian Public Sector Employees 2015 (as amended from time to time) issued by the Public Sector Standards Commissioner pursuant to section 61 of the *Public Administration Act 2004* (Vic).

Code of Practice means a code of practice as described in, and approved under, the PDP Act.

Commencement Date means the date set out in Item 2 of Schedule 1.

Completion Date means the date set out in Item 2 of Schedule 1 or any revised date notified by the School Council pursuant to clause 3.3(c), or if no date is inserted, the date when the provision of the Services have been completed and all payments required to be made under this Agreement have been made.

Commissioner means the Commissioner for Privacy and Data Protection appointed under section 96 of the PDP Act.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to, either party, the State or their Ministers, including any information designated or treated by the School Council as confidential, in its sole and absolute discretion, which is disclosed, made available, communicated or delivered to the Supplier in connection with this Agreement, but excludes information which is in or which subsequently enters the public domain other than as a result of a breach of an obligation of confidentiality. Confidential Information includes any information (regardless of its form) that is:

- (a) Personal Information relating to students of the School;
- (b) Personal Information and business information relating to the School and/or School Council and either of their Personnel; and
- (c) all copies of the information, notes or other records referred to in paragraphs (a) and (b) above.

Contract Data means any information, data, datasets or databases created by or on behalf of the Supplier in the course of providing the Services unless created for the Supplier's internal operational purposes. Contract data does not include the Supplier's internal working documents or notes.

Contract IP means any and all Intellectual Property Rights incorporated in any materials created by or on behalf of the Supplier in the course of providing the Services from the Commencement Date, except any Intellectual Property Rights in data or materials created solely for the Supplier's internal operational purposes.

Contract Publishing System means, if applicable, the system of the Victorian Government for publication of details of contracts entered into by Victorian Government departments or agencies (or any successor to that system).

Deliverable means any item or material (including reports and other documentation) produced or delivered by the Supplier as outputs of the Services.

Department means the Department of Education and Training in the State of Victoria.

Dispute means a dispute arising under or in connection with this Agreement.

Dispute Notice means a notice setting out details about a Dispute that is given under clause 19.1.

Fees means the fees payable to the Supplier for the provision of Services, as set out in or calculated in accordance with Schedule 2.

Framework Organisation means a body prescribed to be a framework organisation for the purposes of Part 11 of the FVP Act.

FVP Act means the *Family Violence Protection Act 2008* (Vic).

Health and Safety Laws means all workplace, health and safety related Laws, including the OH&S Act and the OH&S Regulations.

Health Privacy Principles means the health privacy principles set out in the HR Act.

HR Act means the *Health Records Act 2001* (Vic).

IBAC means the commission established under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) and includes any other organisation that may, from time to time, perform the functions of the commission.

Information Privacy Principles means the information privacy principles set out in the PDP Act.

Intellectual Property Rights includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trade marks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Laws means:

- (a) the law in force in the State and the Commonwealth of Australia, including common law, legislation and subordinate legislation; and
- (b) ordinances, regulations, orders and by-laws of relevant government, semi-government or local authorities.

Losses has the meaning given to that term in clause 13(a).

Ministerial Order means Ministerial Order 870 entitled "Child Safe Standards – Managing the risk of child abuse in schools" (as amended or replaced from time to time).

Moral Rights has the meaning given to that term in the *Copyright Act 1968* (Cth) and includes a right of a similar nature that is conferrable by

statute, and that exists or comes into existence anywhere in the world.

Notice of Delay has the meaning given to that term in clause 3.3(a)(i).

OH&S Act means the *Occupational Health and Safety Act 2004* (Vic).

OH&S Incident means:

- (a) an incident to which Part 5 of the OH&S Act applies; and
- (b) any other event or circumstance relating to health or safety that causes or is likely to cause
 - (i) lost time injuries, medical treatment injuries, first aid injuries or near misses;
 - (ii) an interruption of services to customers;
 - (iii) a threat to the School Council's systems or infrastructure;
 - (iv) a threat to community health and safety
 - (v) a threat to the environment;
 - (vi) a threat to public or private property; or
 - (vii) the creation of the need for urgent action under statute or legislation.

OH&S Regulations means the *Occupational Health and Safety Regulations 2017* (Vic).

Panel means a panel of approved Suppliers established by the Department.

PDP Act means the *Privacy and Data Protection Act 2014* (Vic).

Personal Information has the meaning given to that term in the PDP Act and includes, for the purposes of this Agreement, health information, as that term is defined in the *Health Records Act 2001* (Vic).

Personnel of a party includes the officers, employees, agents, contractors and sub-contractors of that party, who are involved in providing, or supporting the provision of, the Services.

Pre-Existing IP means any and all Intellectual Property Rights owned by or licensed to a party which are made available, provided, or used by a party under this Agreement, excluding Contract IP or Public Sector Data.

Privacy Obligations has the meaning given to that term in clause 18.3(a).

Protective Data Security Standard means any standard issued under Part 4 of the PDP Act.

Public Sector Data has the same meaning as in the PDP Act.

Public Sector Data System has the same meaning as in the PDP Act.

Public Sector Employee has the same meaning as in the *Public Administration Act 2004* (Vic).

Records means information in any format that is created, held, sent, or received by the Supplier (or its Personnel) under, or in the course of, performing the Supplier's obligations under this Agreement, but do not include the Supplier's internal working documents or notes.

Records Act means the *Public Records Act 1973* (Vic).

Replacement Personnel means the replacement of Specified Personnel in accordance with clause 4.4.

School means the school which the School Council represents.

School Council Child Safety Policies means any relevant School Council policies, codes, guidelines or associated documents that in any way relate to child safety, including any policies, codes, guidelines or associated documents that the School produces for the purpose of meeting its minimum child safety standards pursuant to the Ministerial Order.

School Council Representative means the person nominated by the School Council pursuant to clause 8.1(a)(i) for the time being.

School Staff has the meaning given to it in the Ministerial Order.

Services means the services to be provided by the Supplier under this Agreement, as specified in Schedule 2.

Special Conditions means the special conditions (if any) contained in Schedule 3.

Specified Personnel means the Personnel designated in Item 5 of Schedule 1 (or any replacement Personnel under clause 4.4).

Specification means the description of the Services in Item 1 of Schedule 2 or the documents attached to this Agreement at Annexure A.

Staff Costs means 'Pay as You Go' tax, withholding tax, superannuation contributions or charge amounts, fringe benefits tax, workers' compensation insurance premiums, payroll tax and any like taxes and charges arising out of or in relation to this Agreement, or any engagement arising under this Agreement (together with all interest or penalties payable by reference to those costs).

State means the Crown in right of the State of Victoria.

Supplier Representative means the person nominated by the Supplier pursuant to clause 8.1(a)(ii) for the time being.

Tax Invoice has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Tender Documentation (where applicable) means the documentation submitted by the Supplier in response to a request for tender or request for proposal, in the form finally accepted by the School Council and more particularly described in Item 6 of Schedule 1.

Term means a term of this Agreement determined in accordance with clause 2.

Victorian School Term means a Victorian school term as published on the Department's website from time to time.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) the obligations of the Supplier, if more than one person, under this Agreement are joint and several and each person constituting the Supplier acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of this Agreement, of the other as if those acts or omissions were its own;
- (g) the rights of the Supplier, if more than one person, under this Agreement, including the right to payment, jointly benefit each person constituting the Supplier (and not severally or jointly and severally);
- (h) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors,

assigns and persons substituted by novation;

- (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (v) '\$', 'dollars' or 'AUD' is a reference to the lawful currency of the Commonwealth of Australia; and
- (vi) a party or parties is a reference to the School Council and the Supplier (as the case requires); and
- (i) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.

1.3 Headings

Headings do not affect the interpretation of this Agreement.

1.4 Consents or approvals

The School Council may give or withhold any consent or approval, or exercise any discretion, under this Agreement in its absolute discretion unless express provision to the contrary is made.

1.5 Priority of documents

If there is any inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in accordance with the following order of priority:

- (a) the Special Conditions (if any);
- (b) the Agreed Terms;
- (c) the Schedules in numerical order; and
- (d) any other documents created under this Agreement or incorporated into it by reference (including the documents specified in Item 10 of Schedule 1).

2. Term

2.1 Term

- (a) This Agreement commences on the Commencement Date and ends on the Completion Date, unless terminated earlier or extended in accordance with clause 2.2 of this Agreement.
- (b) If the Supplier fails to deliver to the satisfaction of the School Council by the Completion Date any Services or Deliverables that it is required to deliver

under this Agreement then this Agreement will continue, without the Supplier being entitled to any additional payment, until:

- (i) the Service or Deliverable is delivered to the satisfaction of the School Council;
- (ii) the School Council waives the right to insist on delivery of the Service or Deliverable; or
- (iii) the School Council elects to end this Agreement by notice to the Supplier.

2.2 Extension of Term

- (a) The School Council may elect, by notice in writing to the Supplier not later than two months prior to the expiry of the then current Term, to extend the Term of this Agreement for one or more further periods, as set out in Item 2 of Schedule 1.
- (b) Any such further term or terms will be on the same terms and conditions as this Agreement (other than any changes to the Fees agreed by the parties for the further term and excluding, in respect of the final further period, this clause 2.2).

3. Performance of Services

3.1 Provision of Services

The Supplier must provide the Services to the School Council during the Term, on and subject to the terms of this Agreement.

3.2 Service Obligations

The Supplier must:

- (a) provide the Services in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services;
- (b) perform the Services in a manner that complies with all Laws applicable to the Supplier in respect of the provision of the Services;
- (c) without limiting clause 3.2(b), if, in the course of providing the Services, the Supplier or its Personnel:
 - (i) supervises Public Sector Employees;
 - (ii) undertakes work that is of a similar nature to the work undertaken by Public Sector Employees at premises or a location general regarded as a public sector workplace; or
 - (iii) uses or has access to public sector resources or information that are not

normally accessible or available to the public,

the Supplier must comply, or ensure that its Personnel comply (as applicable), with the Code of Conduct as if the Supplier or its Personnel were a Public Sector Employee;

- (d) ensure the highest quality of work and the delivery of the Services with the utmost efficiency;
- (e) act in good faith and in the best interests of the School Council;
- (f) keep the School Council informed of all matters of which it ought reasonably be made aware, and provide such information in relation to the provision of the Services as may reasonably be required by the School Council; and
- (g) carry out its obligations and duties and complete the provision of the Services to the reasonable satisfaction of, and in accordance with the requirements of, the School Council.

3.3 Delay

- (a) If the Supplier is aware of any delay or possible delay in the supply of the Services in accordance with this Agreement, including any failure to provide the Services by the Completion Date, the Supplier:
 - (i) must advise the School Council immediately upon becoming aware of such delay or possible delay (**Notice of Delay**); and
 - (ii) may make an application in writing to the School Council Representative requesting an extension of time.
- (b) The Notice of Delay must set out, in reasonable detail:
 - (i) the circumstances giving rise to such (possible) delay, including the cause of the (possible) delay;
 - (ii) the likely length of such (possible) delay;
 - (iii) the steps the Supplier intends to take to overcome or minimise the (possible) delay; and
 - (iv) such other information as the School Council Representative may reasonably request.
- (c) The School Council Representative may agree to extend the date for performance of the Supplier's obligations (including the Completion Date) if, in the reasonable opinion of the School Council Representative, the circumstances giving

rise to the delay are legitimate and may warrant an extension of time.

- (d) The School Council Representative will promptly notify the Supplier in writing of any revised date for performance agreed by the School Council under clause 3.3(c).
- (e) In the absence of agreement by the School Council under clause 3.3(c), the Services must be performed in accordance with this Agreement without such variation.
- (f) If the Supplier fails to supply the Services by any date for performance specified in this Agreement, including the Completion Date, such failure will constitute a breach by the Supplier and the School Council may terminate this Agreement by notice in writing to the Supplier.

3.4 Acceptance

- (a) After delivery of a Deliverable or performance of a Service, the School Council will undertake such reviews as it considers necessary to determine whether the Deliverable or Service, as the case may be, is fit for purpose and has been performed or delivered in accordance with this Agreement. Within a reasonable time following its review of a Deliverable or Service, the School Council may notify the Supplier in writing:
 - (i) of its acceptance of that Deliverable or Service if it is satisfied that the Deliverable or Service is fit for purpose and complies with this Agreement; or
 - (ii) if the Deliverable or Service is not fit for purpose or does not comply with this Agreement, in which case clause 3.4(b) will apply.
- (b) Following a receipt of a notice from the School Council under clause 3.4(a)(ii), the Supplier must promptly rectify the non-compliance in the Deliverable or Service, as the case may be, at no additional cost to the School Council, and resubmit the Deliverable or Service to the School Council for review in accordance with clause 3.4(a). This process will continue until, at the School Council's discretion, the School Council:
 - (i) waives, in writing, the requirement for the Deliverable or Service to comply with this Agreement;
 - (ii) is satisfied that the Deliverable or Service complies with this Agreement and accepts the Deliverable or Service, as the case may be, in accordance with clause 3.4(a)(i);

- (iii) conditionally accepts the Deliverable or Service, subject to the Supplier agreeing to rectify the non-compliance in the Deliverable or Service, as the case may be, within a fixed timeframe on such terms as the School Council requires; or

- (iv) subject to the School Council having provided the Supplier with at least one opportunity to rectify the non-compliance pursuant to clause 3.4(a)(ii), immediately terminate this Agreement by written notice to the Supplier. If the School Council terminates this Agreement under this clause 3.4(b)(iv), the School Council will be entitled to a full refund of all moneys paid to the Supplier in respect of the relevant Deliverable or Service, as the case may be, and any other Deliverables which the School Council is unable to use following termination.

- (c) No act or omission on the part of the School Council in connection with this clause 3.4 constitutes deemed acceptance of a Service or Deliverable.

3.5 Supplier to provide equipment

The Supplier must, at its own cost, provide any and all plant, equipment, tools (including computer hardware or software and any ancillary support) or other equipment necessary for its performance of the Services. All such equipment must be properly maintained and be appropriate for the purpose for which it is used or intended to be used.

3.6 Inability to provide Services

Without limiting clause 3.3, if, at any time during the Term, the Supplier is unable or is reasonably likely to become unable, for whatever reason, to provide any or all of the Services, the Supplier must immediately notify the School Council Representative of that fact.

3.7 Variations

- (a) The School Council may at any time give written notice to the Supplier proposing a variation to the scope of the Services.
- (b) The Supplier must, within five Business Days of such notice, provide a written proposal as to the varied Fees that would apply with respect to the provision of the varied Services.
- (c) The School Council may accept such proposal in writing within 5 Business Days of its receipt from the Supplier. In the absence of such acceptance, the Services

must be performed in accordance with this Agreement without such variation.

3.8 Time of the essence

Time will be of the essence in the performance of the Services.

4. Supplier's Personnel

4.1 Responsibility for Personnel

- (a) The Supplier must ensure that its Personnel are suitably qualified to undertake their work and comply with all the Supplier's obligations under this Agreement.
- (b) Without limiting clause 4.1(a), the Supplier must ensure that all of its Personnel involved in providing, or supporting the provision of, Services:
 - (i) act with proper diligence and in good faith, and in a manner which is consistent with the Supplier's obligations under this Agreement; and
 - (ii) comply with all directions and instructions of the School Council while on School Council premises.
- (c) The Supplier warrants to the School Council that, to the best of its knowledge after making reasonable enquiries, none of the Supplier's Personnel have engaged in, or are reasonably believed to have engaged in, fraud, collusion or improper, dishonest or corrupt conduct in connection with this Agreement or in any other dealings with the School Council.
- (d) The School Council may require the Supplier to:
 - (i) remove any of its Personnel from the provision of the Services at any time; and
 - (ii) replace the relevant Personnel at no additional cost with another person who has the appropriate skills, qualifications and experience.

4.2 Supplier to notify School Council

The Supplier must immediately notify the School Council if any of the Supplier's Personnel engages in, or is reasonably believed to have engaged in, fraud, collusion or improper, dishonest or corrupt conduct in connection with this Agreement or in any other dealings with the School Council.

4.3 Specified Personnel

The Supplier must ensure that the Specified Personnel:

- (a) are involved in, or perform the Services as described in Item 5 of Schedule 1 and are absent only for normal periods of leave;
- (b) do not engage in any other activity in the course of their employment with or engagement by the Supplier which may, or may be likely to, hinder the performance of the Services; and
- (c) are available to meet with the School Council as reasonably required by the School Council from time to time.

4.4 Replacement of Specified Personnel

- (a) If any of the Supplier's Specified Personnel are unavailable or otherwise unable to provide the Services, the Supplier must promptly notify the School Council of that fact and provide details of alternate, suitably qualified and experienced Personnel to replace the Supplier's Specified Personnel (**Replacement Personnel**).
- (b) The School Council must notify the Supplier in writing within five Business Days as to whether or not it accepts the Replacement Personnel proposed by the Supplier pursuant to clause 4.4(a). The Supplier acknowledges and agrees that the School Council will be under no obligation to accept any person proposed by the Supplier if the School Council is not satisfied as to the qualifications and experience of such person.
- (c) The Supplier must ensure that its Personnel observe and comply with this Agreement.
- (d) Without limiting any other clause in this Agreement, the Supplier must ensure that all Personnel engaged by it to provide the Services comply with the *Worker Screening Act 2020* (Vic).

5. Non-exclusivity

This Agreement is entered into on a non-exclusive basis.

6. Price for the Services

- (a) Subject to this Agreement, the Fees are fixed for the Term and inclusive of:
 - (i) all costs incurred by the Supplier in the provision of the Services; and
 - (ii) all other taxes payable in connection with the Services (excluding GST).
- (b) Expenses or other disbursements may only be charged by the Supplier in accordance with Schedule 2

7. Invoicing and payment

7.1 Invoicing

- (a) The Supplier must submit to the School Council a Tax Invoice in respect of the Services as soon as practicable after acceptance of a Service or Deliverable by the School Council, or as otherwise specified in Schedule 2.
- (b) A Tax Invoice submitted for payment pursuant to clause 7.1(a) must be sent to the School Council Representative at the address specified in Item 3 of Schedule 1.

7.2 Payment of invoice

- (a) Subject to the remainder of this clause 7.2, the School Council will pay the invoiced amount to the Supplier within 30 days of receipt of the invoice.
- (b) If the School Council receives an invoice from the Supplier outside a Victorian School Term, the School Council will pay the invoiced amount to the Supplier within 30 days of the commencement of the next Victorian School Term.
- (c) An invoice will not be paid until such time as the invoice is certified for payment by the School Council Representative. An invoice will not be certified for payment unless the School Council Representative is satisfied that it is correctly calculated with respect to the Services and that Services have been provided as required under this Agreement.
- (d) If the School Council Representative disputes the invoiced amount (whether in whole or in part) for any reason, the School Council must pay the undisputed amount of such invoice (if any), and notify the Supplier of the amount the School Council believes is due for payment. If the School Council and the Supplier are unable to agree on the balance of the invoiced amount, the dispute will be referred for determination in accordance with clause 19. If requested, the Supplier will withdraw the disputed Tax Invoice and issue a replacement Tax Invoice for the undisputed amount.
- (e) Payment of an invoice is not to be taken as:
 - (i) evidence or an admission that the Services have been provided in accordance with this Agreement;
 - (ii) evidence of the value of the Services supplied; or
 - (iii) an admission of liability,but must be taken only as payment on account.

7.3 Rates

- (a) If authorised under Schedule 2, the Supplier may provide the Services on a Time and Materials Basis.
- (b) If a Time and Materials Basis applies, the Supplier's right to claim payment is subject to strict compliance with the following conditions:
 - (i) the Supplier must provide progressive work in progress reports to the School Council from time to time as requested by the School Council;
 - (ii) The Supplier must not charge the School Council any amount in excess of the estimate or amount specified in Schedule 2 or otherwise approved by the School Council in writing;
 - (iii) the Supplier may only charge the School Council for the time reasonably spent by its Personnel in providing the Services, calculated at the Rates and not including travel time, holidays or other leave entitlements; and
 - (iv) the Supplier must ensure that its Personnel record daily timesheets recording all Services provided (in a form approved by the School Council from time to time) and provide copies of those timesheets to the School Council on request.

7.4 Fair Payment

- (a) Where the value of this Agreement is less than \$3.0 million, the School Council will, on demand by the Supplier, pay simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).
- (b) For the purposes of clause 7.4(a), **overdue amount** means an amount (or part thereof) that:
 - (i) is not, or is no longer, disputed in accordance with this Agreement;
 - (ii) is due and owing under a Tax Invoice properly rendered by the Supplier in accordance with this Agreement; and
 - (iii) has been outstanding for more than 30 days from the date of receipt of the invoice (or, in accordance with clause 7.2(b), from the commencement of the next Victorian School Term) or the date that the amount ceased to be disputed, as the case may be.

8. Contract management

8.1 Parties' representatives

- (a) For the purposes of ensuring a productive and efficient relationship between the School Council and the Supplier under this Agreement:
 - (i) the School Council nominates the person or persons specified as such in Item 3 of Schedule 1 as its School Council Representative; and
 - (ii) the Supplier nominates the person or persons specified as such in Item 3 of Schedule 1 as its Supplier Representative.
- (b) The School Council Representative and the Supplier Representative have authority to:
 - (i) exercise all of the powers and functions of his or her party under this Agreement other than the power to amend this Agreement; and
 - (ii) bind his or her party in relation to any matter arising out of or in connection with this Agreement.
- (c) The Supplier must comply with all reasonable instructions given by the School Council Representative.
- (d) Either party may change its then current representative by giving written notice to the other.

8.2 Reports

The Supplier must provide the School Council Representative with all reports, data or other information that the School Council Representative may request to enable it to adequately assess the performance of the Supplier.

9. Competitive pricing

The Supplier must ensure the Fees are (and will remain, for the Term) commercially competitive in terms of:

- (a) the prices offered by the Supplier to other customers whose orders for services are comparable to the order for Services placed by the School Council under this Agreement; and
- (b) prices, and terms and conditions, offered by other Suppliers in the market for services which are the same as or equivalent to the Services.

10. Intellectual Property

10.1 Warranty and indemnity by Supplier

- (a) The Supplier warrants to the School Council that it is entitled to use and deal with any

Intellectual Property Rights used by it in connection with the provision of the Services.

- (b) The Supplier indemnifies and will at all times keep the School Council indemnified against any loss, damage, claim, action or expense (including legal expense) arising out of or otherwise in connection with any breach or alleged breach by the Supplier of the Intellectual Property Rights of any third person.

10.2 Contract IP

- (a) The ownership of any Contract IP vests in the Supplier from the time of creation.
- (b) The Supplier irrevocably and unconditionally grants to the School Council, free of additional charge, a non-exclusive, worldwide, perpetual, transferable licence (including the right to sub-license) to use, reproduce, adapt, modify, publish, distribute and communicate any Contract IP.

10.3 Ownership of Pre-Existing IP and Contract IP

The Pre-Existing IP of each party remains the property of that party or its licensors.

10.4 Licence of Pre-Existing IP

- (a) Subject to (b), the Supplier irrevocably and unconditionally grants to the School Council, free of additional charge, a perpetual, non-exclusive, , worldwide, irrevocable. transferable licence (including the right to sub-license) to use, reproduce, adapt, modify, publish, distribute and communicate the Supplier's Pre-Existing IP to the extent that the Supplier's Pre-Existing IP forms part of or is integral to, any works or other items created by the Supplier in connection with the provision of Services or the Contract IP, as part of the School Council carrying out its functions and for any purpose except commercial exploitation.
- (b) To the extent that the provision of Services by the Supplier necessitates use by the Supplier of the School Council's Pre-Existing IP, the School Council grants the Supplier a non-exclusive, non-transferable licence to use the School Council's Pre-Existing IP during the Term solely for the provision of the Services.

10.5 Public Sector Data

To the extent that the Supplier creates or holds Public Sector Data in providing the Services, the

ownership of all Public Sector Data, including any Intellectual Property Rights shall vest in the School Council upon creation.

10.6 Moral rights

The Supplier warrants that it has or will procure a written consent from all necessary authors to the School Council exercising its right in the Contract Data or Contract IP in a manner that, but for the consent, would otherwise infringe the moral rights of those individuals.

11. Access to Records

11.1 Supplier to retain records

The Supplier must implement and administer a recordkeeping system that maintains complete and accurate Records for all Services supplied under this Agreement. The recordkeeping system must comply with all applicable standards issued under the Records Act.

11.2 Storage

The Supplier must securely store and ensure the integrity of all Records in accordance with all applicable standards issued under the Records Act.

11.3 Right to access and audit

- (a) The School Council or its duly authorised representatives may, after giving reasonable notice at any time during business hours, inspect and/or audit the Records of the Supplier (including any Public Sector Data and Public Sector Data System), and of all other documents or information relevant to the performance of this Agreement. Such representatives will be entitled (at the expense of the School Council) to take copies of or extracts from any such Records, documents or information.
- (b) The right of access and audit granted under clause 11.3(a) may be exercised by the School Council at any time during the Term or in the seven year period following the expiry of the Term.
- (c) The Supplier must provide the School Council with all assistance needed to allow the School Council to perform the audit, including providing access to office space, computers, telephone and photocopy facilities at the premises.
- (d) The School Council must provide the Supplier with reasonable notice of an audit, unless the School Council determines that notice is not practicable or appropriate in the circumstances, and where reasonably practicable, provide an indication of the

documents or class of documents the auditor may require access to.

- (e) The Supplier must immediately take such corrective action required by the School Council to remedy any error, non-compliance or inaccuracy identified in any audit in relation to the manner in which the Supplier has:

- (i) provided the Services; or
- (ii) calculated any Rates and/or Fees or any other amounts or fees billed to the School Council.

- (f) Each party will bear its own costs with respect to any audit under clause 11.3.

11.4 Transfer of certain Records to the School Council

If requested by the School Council during the Term or within one month of expiry or termination of this Agreement, the Supplier must transfer all Records (excluding Records created solely for the Supplier's internal operational purposes) to the School Council in a format and manner which allow the transferred Records to be quickly and easily retrieved, reviewed and utilised by the School Council.

11.5 School Council Records

Where the Supplier has custody of any records or information of the School Council (**School Council Records**) in the course of performing its obligations under this Agreement, the Supplier must retain, store and otherwise handle those School Council Records as though the School Council Records were the Records for the purposes of this Agreement. School Council Records are also Public Sector Data.

11.6 After termination or expiry

The Supplier must only dispose of Records in accordance with the standards issued under the Records Act and must not dispose of any Records for at least seven years after termination or expiry of this Agreement.

12. Failure to perform

- (a) Without limiting any other remedy the School Council may have, if the Supplier fails to provide or perform any of the Services in accordance with the requirements of this Agreement, the School Council will not be required to pay for those Services and may, by notice in writing to the Supplier, require the Supplier to:
 - (i) remedy any default (if the default is capable of being remedied) at the Supplier's own expense; or

- (ii) re-perform the Services (if the Services are capable of being re-performed by the Supplier),

within the time specified in the notice (which must be reasonable having regard to the nature of the Services).

- (b) If the default referred to in clause 12(a) is not capable of being remedied or the Services are not capable of being re-performed, or the Supplier fails within the time specified to remedy the default or re-perform the Services, the School Council may either:

- (i) remedy that default or re-perform the Services itself; or
- (ii) have the Services remedied or re-performed by a third party,

and in either case, the Supplier must pay the reasonable costs incurred by the School Council in doing so.

13. Indemnity

- (a) The Supplier at all times indemnifies and will continue to indemnify, hold harmless and defend the Department, the School Council and its Personnel (in this clause, each an **Indemnified Party**) to the fullest extent permitted by law, against any liability, loss, damage, claim, action or expense (including all legal costs determined on a full indemnity basis) (**Losses**) which any Indemnified Party suffers or incurs as a result of any demand, suit, action, claim or proceeding against an Indemnified Party where the Losses arise as a direct or indirect result of any of the following:

- (i) personal injury, including sickness and death;
- (ii) any loss or damage to property;
- (iii) a breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
- (iv) any loss or corruption of Public Sector Data;
- (v) any claim by any person for loss or damage in respect of a breach of the recordkeeping requirements specified in clause 11;
- (vi) any wrongful, fraudulent, unlawful or negligent acts or omissions of the Supplier or its Personnel;
- (vii) any wilful misconduct or unlawful act or omission by the Supplier or its Personnel;

- (viii) any third party claim arising out of a breach of this Agreement by the Supplier or its Personnel (including breach of warranty) or any negligent act or omission of the Supplier or its Personnel; or

- (ix) any infringement or alleged infringement of the Intellectual Property Rights, Moral Rights or any other rights of any person, including any third party,

except to the extent that any such Loss is caused by the negligence or other wrongful act or omission of the Indemnified Party.

- (b) To the extent that the indemnity in this clause refers to persons other than the School Council, the School Council holds this clause on trust for those other persons.
- (c) It is not necessary for the School Council to incur expense or make a payment before enforcing a right of indemnity conferred by this Agreement.

- (d) If any indemnity payment is made by the Supplier under this clause 13, the Supplier must also pay to the Indemnified Party an additional amount equal to any tax which is payable by the Indemnified Party in respect of that indemnity payment.

14. Warranties

- (a) The Supplier warrants to the School Council that:

- (i) it will comply with all Laws and applicable State government policies which are referred to in this Agreement or made known by the School Council to the Supplier;
- (ii) the provision of the Services will be carried out with all due care and skill and in accordance with all applicable Laws, standards, principles and practices;
- (iii) it and its Personnel are appropriately qualified and have the requisite knowledge, skill and expertise to provide the Services in accordance with this Agreement;
- (iv) whilst on premises owned or controlled by the School Council, the Supplier and its Personnel will at all times comply with the School Council's lawful directions and policies of which the Supplier is notified or is otherwise aware, including any applicable occupational health and safety and security policies;

- (v) where the School Council has, either expressly or by implication, made known to the Supplier any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result;
 - (vi) it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Services and Deliverables and to grant to the School Council the licences contemplated by this Agreement;
 - (vii) the provision of the Services and the possession or use of any Deliverable will not infringe any right of any third party (including any Intellectual Property Right) or any Laws;
 - (viii) to its knowledge, there are no claims or investigations pending or threatened by or against it which may have a material effect on its ability to perform its obligations under this Agreement; and
 - (ix) all representations made by the Supplier in or in connection with the Tender Documentation (if applicable) were and remain accurate.
- (b) The Supplier must notify the School Council in writing if anything happens or may happen that may:
- (i) make the Supplier no longer comply with any of the warranties given by the Supplier under this Agreement; or
 - (ii) affect the Supplier's ability to perform or satisfy any of its obligations under this Agreement.

15. Termination

15.1 Termination by the School Council

The School Council may immediately terminate this Agreement by notice in writing to the Supplier if:

- (a) the Supplier fails to remedy, to the satisfaction of the School Council, any breach of this Agreement (which in the reasonable opinion of the School Council is able to be remedied) within 14 days after the date on which the School Council issues the Supplier a written notice requiring the Supplier to remedy the breach;
- (b) the Supplier breaches any material provision of this Agreement and in the reasonable opinion of the School Council such breach cannot be remedied;

- (c) the Supplier or any of its Personnel or sub-contractors have engaged in, or are reasonably believed by the School Council to have engaged in, fraud, collusion, improper, dishonest or criminal conduct or any other serious misconduct in connection with this Agreement or in any other dealings with the School Council;
- (d) the Supplier commits any act or does any thing that is, in the opinion of the School Council, contrary to prevailing community standards, or is otherwise regarded by the public as unacceptable or which brings the reputation of the Supplier into disrepute and as a consequence the School Council believes that its continued association with the Supplier will be prejudicial or otherwise detrimental to the reputation of the School Council or the State;
- (e) the Supplier goes into liquidation or a receiver and manager or mortgagee's or chargee's agent is appointed or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors; or
- (f) the Supplier's inability to provide Services notified to the School Council Representative pursuant to clause 3.6, continues for any period beyond seven days, provided however that the cause of the supplier's inability to provide Services is not due to the fault of the School Council.

15.2 Termination without cause

- (a) The School Council may terminate this Agreement at any time without cause and without needing to provide reasons by giving the Supplier a minimum of 30 days notice in writing.
- (b) Where this Agreement is terminated by the School Council pursuant to clause 15.2(a), the School Council will pay the Supplier:
 - (i) for the Services performed in accordance with this Agreement up to the date of the termination; and
 - (ii) the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination, excluding any loss of profit,
 and the School Council has no other liability to the Supplier in relation to that termination.
- (c) When the School Council issues a notice under clause 15.2(a), the Supplier will immediately comply with any directions given in the notice and do all that is possible

to mitigate its losses arising from the termination of this Agreement.

15.3 Termination by the Supplier

- (a) The Supplier may terminate this Agreement by giving at least 30 Business Days written notice to the School Council if the School Council fails to pay amounts due under this Agreement which have the following characteristics:
 - (i) are the subject of Tax Invoices complying with this Agreement;
 - (ii) are due and payable in accordance with this Agreement;
 - (iii) are not the subject of a good faith dispute;
 - (iv) are overdue for a period of at least 60 Business Days; and
 - (v) are amounts for which a demand has been made, provided that the demand clearly states that the amount has been overdue for a period of at least 60 Business Days and that the Supplier will have the right to terminate this Agreement on 30 Business Days' notice after the expiration of five Business Days following service of the demand if the demand is not met within that five Business Day period.
- (b) Clause 15.3(a) constitutes the Supplier's sole and exclusive right to terminate this Agreement.

15.4 Consequences of termination or expiry

- (a) Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry.
- (b) On termination or expiration of this Agreement, the Supplier must (at no additional cost to the School Council) immediately cease using all materials (whether in written or electronic form) that contain or encapsulate any Contract Data, Public Sector Data or Confidential Information and, at the election of the School Council:
 - (i) if requested by the School Council, provide reasonable assistance to the School Council to facilitate the transfer of responsibility for the Services to the School Council or another person nominated by the School Council; and
 - (ii) immediately cease using all materials that contain any Contract Data, Public Sector Data or Confidential

Information, and at the School Council's discretion either:

- (A) delete or destroy the materials, as applicable; or
- (B) return the materials to the School Council in the format in which they were first provided by the School Council and, in addition, if required by the School Council, in a non-proprietary and open access file format (such as .txt, .csv, .rft, etc) as specified by the School Council,

at no additional cost to the School Council.

- (c) Where this Agreement is terminated by the School Council pursuant to clause 15.1(a), 15.1(e) or 15.1(f) the School Council may by written notice (the **Transitioning Notice**) request that the Supplier provide the School Council the transitioning out services described in this clause 15.4(c) in respect of some or all of the Services being performed by the Supplier and specified in that notice (the **Terminating Services**).
- (d) For the term of any period specified in the Transitioning Notice, the Supplier will provide the School Council with cooperation, assistance, advice, explanations and information, do such acts and things and execute such documents, and comply with such of the School Council's directions, as may be reasonably necessary or desirable to:
 - (i) ensure the completion and continuity of the functions and performance of the terminating Services;
 - (ii) facilitate the efficient and orderly transfer of responsibility for and conduct of the Terminating Services (or services in the nature of the Terminating Services) nominated by the School Council to the School Council or its nominee; and
 - (iii) allow all of the Terminating Services to continue being performed without interruptions or adverse Services on being transferred to the School Council,(together, the **Transition Out Services**).
- (e) Without limiting clause 15.4(d), the Transition Out Services will include at the School Council's option:

- (i) developing or modifying, together with the School Council, a plan for continuity of some or all of the Services and the orderly transition of responsibility for the provision of the Terminating Services to the School Council itself;
- (ii) continuing to perform some or all of the Services in accordance with this Agreement up to the date the Term is due to expire;
- (iii) continuing to perform the Terminating Services for a specified period after the Term is due to expire (on the basis that, during the period specified by the School Council in the Transitioning Notice, this Agreement continues to apply to the Terminating Services in the same manner as it applied to the Services before the School Council gave the Transitioning Notice;
- (iv) providing all necessary management services to ensure the continuity of all Services and the efficient and effective transition of responsibility for the performance of the Terminating Services;
- (v) providing the School Council with such information concerning the Terminating Services and any intellectual property rights and third party services used by the Supplier to perform the Terminating Services as is reasonably necessary to transition the responsibility for the provision of the Terminating Services to the School Council itself;
- (vi) training personnel designated by the School Council in the use of any business processes or associated materials used in connection with the provision of the Terminating Services, and otherwise providing reasonable training in the provision of the Terminating Services to the School Council or its nominee;
- (vii) delivering all Contract Data or Public Sector Data, and all documentation, records or property of the School Council in the Supplier's possession, custody or control, to the School Council or its nominee;
- (viii) using its best endeavours to cause any subcontractor of the Supplier or other third parties which are utilised by the Supplier in the provision of the Terminating Services, to enter into agreements with the School Council or its nominee on terms and conditions no less favourable than those offered to the Supplier;
- (ix) novating or assigning or securing the novation or assignment of any contracts with the subcontractors of the Supplier or other third parties which are utilised by the Supplier in the provision of the Terminating Services;
- (x) in the School Council's discretion, either:
 - (A) deleting or destroying all materials that contain any Public Sector Data or Confidential Information, as appropriate; or
 - (B) returning the materials to the School Council in the format in which they were first provided by the School Council and, in addition, if required by the School Council, in a non-proprietary and open access file format (such as .txt, csv, .rft etc) as specified by the School Council; and
- (xi) in consultation with the School Council, providing all reasonable data conversion assistance, including the downloading or delivery of any databases to the School Council or its nominee and the reloading of those databases;
- (f) The School Council will pay for any Terminating Services performed by the Supplier in accordance with reasonable market rates or as may be agreed between the parties.

15.5 Survival

Clauses 1, 7, 10, 10.4, 11, 13, 14, 15.4, 18, 22, 23, 24 and 26 survive the termination or expiry of this Agreement or the completion of the Services and may be enforced at any time.

16. Insurance

- (a) The Supplier must (and must ensure that any sub-contractors appointed by it under clause 20) obtain and maintain for the Term the insurances specified in Item 4 of Schedule 1 with an insurer that is acceptable to the School Council.

- (b) Unless otherwise agreed in writing, the Supplier must provide the School Council with copies of valid certificates of currency of any insurance it is required to the School Council:
 - (i) on or before the Commencement Date and annually as at each anniversary of the Commencement Date; and
 - (ii) renewed certificates of currency provided no less than five Business Days prior to the expiry of the certificates they replace; and
 - (iii) as otherwise requested by the School Council.

17. Accident compensation

The Supplier must ensure that, in respect of its Personnel and any other persons engaged by the Supplier to provide the Services, it:

- (a) complies with the provisions of the *Accident Compensation Act 1985* (Vic);
- (b) insures against its liability to pay compensation whether under Law or otherwise; and
- (c) produces to the School Council on request any certificates or like documentation required by the *Accident Compensation Act 1985* (Vic).

18. Confidentiality, privacy and data protection

18.1 Use and disclosure of Confidential Information

- (a) The Supplier will keep the Confidential Information confidential and secure and will (and will ensure that its Personnel and advisers will):
 - (i) use and reproduce Confidential Information only to the extent necessary to perform its obligations under this Agreement;
 - (ii) not disclose or otherwise make available Confidential Information other than to its Personnel who have a need to know the information to enable the Supplier to perform its obligations under this Agreement;
 - (iii) ensure that the Confidential Information is stored in a safe and secure manner, and protect it against unauthorised copying, use, disclosure, access and damage or destruction, at all times; and
 - (iv) comply with all applicable Laws, the School Council's and the State's policies and procedures and standards

(as notified or made available to the Supplier from time to time, including any specified in a Schedule) in relation to the Confidential Information and take all necessary precautions to prevent any unauthorised access to the Confidential Information.

- (b) All Confidential Information will remain the property of the School Council.
- (c) The Supplier acknowledges that the School Council will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Supplier of this clause 18 and without the need on the part of the School Council to prove any special damage.
- (d) Notwithstanding anything in this clause 18.1, the Supplier may disclose the Confidential Information:
 - (i) if required by Law; or
 - (ii) to the Supplier's financial or legal advisers for the purposes of obtaining professional advice or assistance.
- (e) The Supplier must immediately notify the School Council in writing in the event of any suspected, threatened or actual unauthorised use or disclosure of any of the Confidential Information, and must include in the notice:
 - (i) the nature and content of the Confidential Information; and
 - (ii) the details of the person to whom the Confidential Information has been (or may be) disclosed to.
- (f) If requested by the School Council, the Supplier must ensure that all of its Personnel involved in providing the Services who may have access to the Confidential Information execute a deed of confidentiality in a form acceptable to the School Council prior to providing the Services under or in connection with this Agreement.
- (g) Except as otherwise permitted by this Agreement, the Supplier agrees not to publish, advertise, promote or acknowledge activities relating to this Agreement or use any logo or trademark or any other Intellectual Property Rights of the School Council without the prior written consent of the School Council.

18.2 Supplier's consent to disclosure

- (a) The Supplier consents to the School Council disclosing or publishing any

information of or about this Agreement as follows:

- (i) all such information as is necessary to comply with the requirements of the Contract Publishing System;
- (ii) to other Victorian Government departments and agencies or Ministers of the State of Victoria in connection with the use of the Services;
- (iii) to any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Supplier;
- (iv) by the office of the Auditor General appointed under section 94A of the *Constitution Act 1975* (Vic) (**Auditor-General**) or the ombudsman appointed under the *Ombudsman Act 1973* (Vic) (**Ombudsman**);
- (v) to comply with Law, including the *Freedom of Information Act 1982* (Vic); or
- (vi) to the IBAC.

18.3 Privacy

- (a) The Supplier agrees to be bound by the Information Privacy Principles, any applicable Code of Practice and the Health Privacy Principles (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Supplier in connection with this Agreement in the same way and to the same extent as the Privacy Obligation would have applied to the School Council in respect of that act or practice had it been directly done or engaged in by the School Council.
- (b) The Supplier must:
 - (i) assist the School Council to comply with its obligations set out in the Privacy Obligations;
 - (ii) immediately notify the School Council upon becoming aware of any suspected, threatened or actual breach of the Privacy Obligations and comply with all directions of the School Council in respect of the suspected, threatened or actual breach;
 - (iii) provide the School Council with such co-operation as the School Council requires in relation to resolving any complaint concerning privacy; and
 - (iv) provide access to or amendment of any record as directed by the School Council.

- (c) The Supplier also agrees to comply with any directions made by the Commissioner, the Office of the Australian Information Commissioner or the Victorian Health Complaints Commissioner relevant to this Agreement.
- (d) Without limiting clauses 18.3(a) to 18.3(c), in relation to any Personal Information obtained by the Supplier in connection with this Agreement, the Supplier must:
 - (i) not collect, use, disclose, store, transfer or handle the information except in accordance with the Privacy Obligations;
 - (ii) not, without the prior consent of the School Council, disclose the information to a person who is outside Victoria;
 - (iii) take all reasonable steps to ensure that the information is protected from misuse, interference or loss, and from unauthorised access, modification or disclosure;
 - (iv) take all reasonable steps to destroy or permanently de-identify information that is no longer needed for the purposes of this Agreement;
 - (v) co-operate with any reasonable request or direction the School Council makes which relates to the protection of the information or the exercise of the functions of the Commissioner, the Commonwealth Privacy Commissioner or the Victorian Health Services Commissioner;
 - (vi) ensure that access to the information is limited to those of its Personnel who are required to access that information for the purposes of this Agreement; and
 - (vii) comply with any reasonable direction of the School Council in relation to a complaint concerning privacy received by either party.

18.4 Evidence of compliance

If requested by the School Council, the Supplier must provide to the School Council within five Business Days evidence of its compliance with the obligations in relation to privacy under clause 18.3.

18.5 Data Protection

- (a) The Supplier agrees to be bound by the Protective Data Security Standards and will not do any act or engage in any practice that contravenes a Protective Data Security Standard or would give rise to a

contravention by the School Council in respect of any Public Sector Data collected, held, used, managed, disclosed or transferred by the Supplier, on behalf of the School Council, under or in connection with this Agreement.

(b) The Supplier must:

- (i) only use the Public Sector Data to the extent necessary to perform its obligations under this Agreement;
- (ii) not disclose or transfer the Public Sector Data outside Victoria unless approved by the School Council in writing;
- (iii) not do anything that would place the School Council in breach of the Privacy Obligations;
- (iv) prohibit and prevent unauthorised access by any person to Public Sector Data;
- (v) comply with any of the School Council's and the State's policies, and procedures and standards (as notified of made available to the Supplier from time to time, including any specified in a Schedule) in relation to the management, secure retention and destruction of Public Sector Data; and
- (vi) immediately notify the School Council if the Supplier suspects that any Public Sector Data has (or may be) lost or corrupted or there is unauthorised access to the Public Sector Data, proposing remedial action it will take or specifying the actions that will be taken to prevent recurrences.

19. Disputes

19.1 Dispute Notice

A party claiming that a dispute has arisen must promptly give the other party a Dispute Notice.

19.2 Dispute resolution before court proceedings

- (a) Subject to clause 19.2(b), the parties must attempt to resolve all Disputes under this clause before starting any court proceedings, other than court proceedings for interlocutory relief.
- (b) If a Dispute remains unresolved 60 Business Days after the Dispute Notice date, either party may commence court proceedings in relation to the Dispute.

19.3 Parties to meet

- (a) The parties must use reasonable endeavours to resolve a Dispute by escalation through the following process:

- (i) within 10 Business Days of the Dispute Notice date, the parties' representatives must meet and attempt to resolve the Dispute.

- (ii) If the parties' representatives are not able to resolve the Dispute within 20 Business Days of the Dispute Notice date, a nominated senior executive officer (or equivalent) of each of the parties must meet and attempt to resolve the Dispute in good faith.

- (b) If the senior executive officers (or equivalent) of the parties are not able to resolve the Dispute within 30 Business Days of the Dispute Notice date, the School Council may refer the Dispute to mediation in accordance with clause 19.4.

19.4 Mediation

If any Dispute is referred to mediation by the School Council under clause 19.3(b):

- (a) the mediation will be administered by the Australian Disputes Centre (ADC) in accordance with its mediation guidelines;
- (b) the parties will agree on a mediator within 10 Business Days of the referral, failing which the mediator will be appointed by the ADC;
- (c) the parties must conduct the mediation within 20 Business Days of the mediator being appointed;
- (d) each party must bear its own costs in relation to attendance at, and participation in, the mediation; and
- (e) the costs of the mediator will be borne equally by the parties.

19.5 Performance during Dispute resolution

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Agreement.

19.6 Confidentiality

Any information or documents disclosed by a party during the Dispute resolution process:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

20. Sub-contracting

- (a) Except as expressly provided in this Agreement, the Supplier must not sub-contract to any third person any of its obligations under this Agreement without

the prior written consent of the School Council.

- (b) The Supplier must ensure that any person engaged by it complies with all obligations imposed on the Supplier by this Agreement. The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.
- (c) The School Council may revoke its approval of a sub-contractor at any time without cause by giving at least 10 Business Days notice to the Supplier in which case the Supplier must immediately stop using the sub-contractor and make alternative arrangements for the Services being provided by the sub-contractor.

21. Access and safety

21.1 Access to premises

If the Supplier requires access to the premises of the School Council in connection with the provision of the Services, the School Council will, subject to its usual security requirements, permit the Supplier reasonable access to the premises at such times as may be reasonably necessary to enable the Supplier to provide the Services.

21.2 Obligations

If the Supplier enters the premises of the School Council, the Supplier must and must ensure that its Personnel will:

- (a) protect people and property;
- (b) prevent nuisance and unnecessary noise and disturbance;
- (c) act in a safe and lawful manner and comply with the safety standards and policies of the School Council (as notified to the Supplier);
- (d) comply with any lawful directions of the School Council;
- (e) comply with all applicable Health and Safety Laws; and
- (f) in providing the Services, eliminate risks to health and safety so far as is reasonably practicable and, if it is not reasonably practicable to eliminate risks to health and safety, reduce those risks so far as is reasonably practicable; and
- (g) without limiting the Supplier's obligations arising out of the Agreement or under any Law, notify the School Council immediately (and in any event not later than 12 hours after such matter first arises) or any work, health or safety matters arising out of or in connection with the provision of Services,

including the occurrence of any OH&S Incident.

21.3 No occupier's liability

Neither the Department nor the School Council or their respective Personnel and invitees will be responsible for any damage done to the property of the Supplier's or its Personnel or sub-contractors or for any personal injury sustained by any of the Supplier's Personnel or sub-contractors occurring on the School Council's premises to the extent that such personal injury or property damage occurred as a result of:

- (a) the negligence or recklessness of the Supplier or its Personnel or sub-contractors; or
- (b) the Supplier or its Personnel or sub-contractor's failure to comply with the occupational health and safety and security policies of the Department or School Council (as notified to the Supplier).

21.4 Repairs

- (a) If the Supplier needs to access the School Council's premises and/or use of the School Council's property (both requiring the School Council's consent) in order to carry out the Services, then, the Supplier is responsible for and must promptly repair any damage to the School Council's property and/or premises to the extent caused or contributed to by the Supplier.
- (b) If the Supplier fails to properly repair any such damage it is responsible for under this clause 21.4 within a reasonable time then the School Council may do so and the Supplier must immediately reimburse the School Council the cost of such repairs.

21.5 No Warranty

The School Council does not warrant that the School Council's premises accessed by the Supplier and/or School Council's property used by the Supplier under this clause 21 is suitable for the Supplier's use and to carry out its Services.

22. Notices

22.1 Method of delivery

A notice, demand, certification, process or other communication relating to this Agreement must be in writing and may be sent by post, courier or by electronic mail as follows:

- (a) to the School Council: to the School Council Representative, at the address which is set out in Item 3 of Schedule 1; and
- (b) to the Supplier: to the Supplier Representative, at the address which is set out in Item 3 of Schedule 1.

22.2 Time of delivery

A notice or document will be taken to be delivered or served as follows:

- (a) in the case of delivery in person or by courier, when delivered;
- (b) in the case of delivery by post, two (seven if posted to or from a place outside Australia) Business Days after the date of posting; and
- (c) in the case of electronic mail, if the receiving party has agreed to receipt in that form under this Agreement and the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e-mail address), when receipt of the message is recorded on the sender's computer.

22.3 After hours communications

If any notice or document is delivered or deemed to be delivered:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been delivered at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

23. GST

23.1 Definitions

Terms used in this clause have the same meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

23.2 Consideration is inclusive of GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are inclusive of GST. If GST is imposed on any supply made under or in accordance with this Agreement which is not expressed to be inclusive of GST, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with this Agreement.

23.3 Reimbursement

If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first

party will be the amount of the Reimbursable Expense net of input tax credits (if any) to which the other party is entitled in respect of the Reimbursable Expense plus any GST payable by the other party.

23.4 Adjustment Event

If an adjustment arises in relation to a taxable supply made under this Agreement, the Supplier must recalculate the amount payable on account of GST under clause 23.2 to take account of the adjustment event. The Supplier must issue an adjustment note to the School Council within 28 days of becoming aware of the adjustment event. A corresponding payment to reflect the adjustment must be made by the Supplier to the School Council, or by the School Council to the Supplier, as the case may be.

23.5 Other taxes

Subject to the other provisions of this Agreement, the Fees include all taxes (other than GST), duties (including stamp duty), charges, fees and other imposts of whatever kind (including any fine or penalty imposed in connection with them) that may be levied, assessed, charged or collected in connection with this Agreement, to the extent applicable.

24. Staff Costs

- (a) The Supplier will indemnify and keep indemnified the School Council from and against all liability for the Staff Costs in any way relating to the Services.
- (b) If the School Council is or becomes liable to pay any Staff Costs, the School Council may deduct the amount of its liability for the Staff Costs from any amount due by the School Council to the Supplier, whether under this Agreement or otherwise.

25. Requirement for Working with Children and Police Checks

- (a) If the Supplier enters the premises of the School Council, the Supplier must (and must ensure that all persons engaged or used by it to enter the School Council's premises, including its Personnel):
 - (i) have undertaken a satisfactory working with children check if required pursuant to the *Worker Screening Act 2020* (Vic) or as otherwise requested by the School Council;
 - (ii) have undertaken a satisfactory police records check, if requested by the School Council; and
 - (iii) have met any additional relevant legal requirements and policies of the School Council, School and/or Department in relation to the suitability

of persons to work with school children or within the precinct of the School as advised by the School Council.

- (b) The Supplier must ensure the terms and conditions of employment of any staff or of engagement of any contractor for the purpose of entering the School Council's premises under this Agreement are consistent with the above obligations.

26. Child Safe Standards

- (a) The parties acknowledge and agree that Victorian Government schools are committed to:
 - (i) creating child safe environments;
 - (ii) protecting students from abuse or harm in the school environment, managing the risk of child abuse, providing support to a child at risk of child abuse and responding to incidents or allegations of child abuse in accordance with their legal obligations, including Child Safety Laws.
- (b) This clause only applies to the extent that the Supplier (and its Personnel) are engaged in Child-connected work.
- (c) The Supplier acknowledges that the School Council and School Staff are required to comply with Child Safety Laws, the Ministerial Order and School Council Child Safety Policies.
- (d) If the Supplier is an Applicable Entity, it warrants to the School Council that it:
 - (i) is compliant and will continue to comply with Child Safety Laws; and
 - (ii) will immediately provide the School Council with copies of any documents or information in respect to any compliance action taken by any regulatory authority in connection with child safety against the Supplier (or its Personnel).
- (e) The Supplier (and its Personnel) must:
 - (i) if applicable (whether or not the Supplier must itself comply with Child Safety Laws), comply with any relevant School Council Child Safety Policies; and
 - (ii) comply with any reasonable direction by the School Council in respect to compliance by the School Council, School Staff and/or the Supplier with any Child Safety Laws or any relevant School Council Child Safety Policies.

- (f) The School Council may terminate this Agreement immediately if, in the School's Council's reasonable opinion, it determines at any time that:

- (i) there is a breach of any Child Safety Laws caused by, or in any way connected with, the Supplier or its Personnel; or
- (ii) the Supplier or any of its Personnel are not suitable to engage in Child-connected work for the purposes of the School Council and School Staff's compliance with the Child Safety Laws or relevant School Council Child Safety Policies.

27. Family Violence Risk Assessment and Risk Management Framework (MARAM)

If the Supplier is a Framework Organisation or an Agency under the FVP Act it warrants to the School Council that:

- (a) it will Align its relevant policies, procedures, practice guidance and tools with the Approved Framework as amended from time to time; and
- (b) it will maintain Alignment of its relevant policies, procedures, practice guidance and tools with the Approved Framework during the Term of this Agreement.

28. General

28.1 Costs

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

28.2 Amendment

This Agreement may only be varied or replaced by agreement in writing.

28.3 Waiver and exercise of rights

A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

28.4 Further assurance

Each party must promptly execute and deliver all documents and take all other actions necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

28.5 Severability

Any provision of this Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that

it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

28.6 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

28.7 Set off

The School Council may set off against any sum owing to the Supplier under this Agreement any amount then owing by the Supplier to the School Council.

28.8 Governing law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria and the parties submit to the exclusive jurisdiction of the courts of Victoria.

28.9 Assignment of rights

The Supplier must not assign any right under this Agreement without the prior written consent of the School Council.

28.10 No merger

The warranties, undertakings, agreements and continuing obligations in this Agreement do not merge on completion.

28.11 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

28.12 Entire understanding

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

28.13 Publicity

The Supplier must not make any public announcement or media release in respect of any aspect of this Agreement or the Services without the prior written approval by the School Council.

28.14 Relationship of parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties. Nothing in this Agreement

will constitute or deem a party to be the employee of another party.

28.15 No inducements

- (a) The Supplier will not, and will ensure that its Personnel will not, directly or indirectly, offer, promise, agree to pay, give, accept, or solicit anything of value (including to or from any third party) in order to secure any reward or improper benefit other than payment for the performance of its obligations under this Agreement.
- (b) The School Council may terminate this Agreement immediately on notice to the Supplier if the Supplier or any of its Personnel is found to have engaged in any conduct under clause 28.15(a) and recover the amount of any loss resulting from such termination as a debt due from the Supplier.

28.16 Conflict of interest

- (a) The Supplier warrants that it does not, and will ensure that its Personnel do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, their duties and interests under this Agreement.
- (b) The Supplier must promptly inform the School Council of any matter which may give rise to an actual or potential conflict of interest and comply with any reasonable directions given by the School Council in terms of dealing with that conflict.
- (c) The Supplier acknowledges and agrees that failure to comply with this clause 28.16 will constitute a breach of a fundamental term of this Agreement.

28.17 Electronic Execution

- (a) Each party acknowledges and agrees to the signing of this Agreement by electronic means. The parties agree to be legally bound by the Agreement signed this way.
- (b) This Agreement constitutes an original document in an electronic format and will have the same legal effect, validity and enforceability as a document signed with a signature affixed by hand.

Signing page

Executed as an agreement

School Council

Signed by a duly authorised officer of the **School Council** who by signing this Agreement using an electronic signature acknowledges that, on signing using that method, the authorised officer is signing on behalf of the School Council which will be bound by the Agreement:

Signature of authorised officer

Name of authorised officer (print)

Date

Position of authorised officer

Supplier

[Option 1: use this signing clause when the Supplier is a company incorporated in Australia with more than one director and is signing through directors, or a director and company secretary. Delete if not used]

Signed by [Supplier name], ACN [insert ACN] in accordance with s127(1) of the *Corporations Act 2001* (Cth).

Signature of Director

Signature of Company Secretary/Director

Name of Director (print)

Name of Company Secretary/Director (print)

Date

Date

[Option 2: use this signing clause when the Supplier is an incorporated association. Delete if not used]

Signed by [Supplier name], Registered Association Number [insert Number] in accordance with the *Associations Incorporation Reform Act 2012* by its duly authorised officer who by signing this Agreement using an electronic signature acknowledges that, on signing using that method, the authorised officer is signing on behalf of the Supplier which will be bound by the Agreement.

Signature of Authorised person

Signature of Authorised person

Name of Authorised person (print)

Name of Authorised person (print)

Position of authority (print)

Position of authority (print)

Date

Date

[Option 3: use this signing clause when the Supplier is a company incorporated in Australia with a sole director. Delete if not used]

Signed by [Supplier name], ACN [insert ACN]

Signature of Sole Director and Company Secretary

Signature of witness

Name of Sole Director and Company Secretary print)

Name of witness (print)

Date

Date

[Option 4: use this signing clause when the Supplier is an individual signing electronically. Delete if not used]

Signed by [Supplier name] who consents to entering into the Agreement using an electronic signature and acknowledges that, on signing using that method, they are bound by the Agreement.

Signature of Supplier

Date

Schedule 1 Agreement Variables

Item 1: Parties to Agreement

(a) School Council

[\[insert details\]](#)

Name:	Virtual School Victoria
ABN:	
Address:	315 Clarendon Street, Thornbury, Victoria 3071

(b) Supplier

[\[insert details\]](#)

Name:	[insert registered name of Supplier]
ABN:	
Address:	

Item 2: Term (Clause 2)

[\[insert details\]](#)

Commencement Date:	
Completion Date:	
Further Term(s):	

Item 3: School Council Representative and Supplier Representative 8.1(a)(i)

(a) School Council Representative

[\[insert School Council details\]](#)

Name:	
Title:	
Telephone:	
Mobile:	
Email:	
Address:	

(b) Supplier Representative

[\[insert Supplier details\]](#)

Name:	
Title:	

Telephone:	
Mobile:	
Email:	
Address:	

Item 4: Insurance (Clause 16)

[amend as considered appropriate having regard to the transaction]

- (a) Subject to paragraph (b), the Supplier is required to obtain and maintain during the Term:

Type of coverage	Amount (AUD)
Public liability insurance	\$20 million [per event / in the aggregate]
Product liability insurance	\$5 million [per event / in the aggregate]
Professional indemnity insurance	\$5 million [per event / in the aggregate]
Workcover	[insert]

- (b) The Supplier is only required to maintain:

- (i) product liability insurance if it supplies goods to the School Council; or
- (ii) professional indemnity insurance if it supplies skilled, professional services to the School Council.

Item 5: Supplier's Key Staff (Clause 4)

[Insert names and role of key staff if School Council requires specific staff to provide the services]

Item 6: Tender Documentation (Clause 1.1)

[insert details of tender documentation provided by the Supplier]

Schedule 2 Services and Fees

Item 1: Services

[Insert a description of the required services OR if there s a specification, reference that document and attach as Annexure]

Item 2: Fees

[insert or attach details of Fees]

Schedule 3 Special Conditions

Nil

[If Special conditions are required, delete this sentence and insert details]

Annexure A**Specification**

[Attach the Specification and include any amendments requires as a result of clarifications and/or negotiations.
Delete is Services particularised in Item 1 of Schedule 2]